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8 MIR E. ALI and SHAKERA ALI

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION  
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15       LOLITA RIDGEWAY and TORRIS                              }) Case No. C08-01001 EDL  
16       RIDGEWAY,    })  
17    Plaintiffs,    }) **DEFENDANTS' ANSWER TO**  
18    vs.    }) **COMPLAINT FOR MONETARY,**  
19       MIR E. ALI and SHAKERA ALI, individually              }) **DECLARATORY AND INJUNCTIVE**  
20       and doing business as HASTINGS STREET                   }) **RELIEF**  
21       APARTMENTS,   })  
22   Defendants.   })  
23   })  
24   })  
25   })  
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27   Except as specifically set forth below, Defendants MIR E. ALI and SHAKERA ALI,  
28   sued individually and doing business as HASTINGS STREET APARTMENTS (hereafter the  
   "Defendants") herewith deny all allegations of said Complaint, and each alleged cause of action  
   thereof, and in that connection these Defendants deny that Plaintiffs were injured or damaged as  
   alleged, or at all, by reason of any act or omission of these answering Defendants.

1 Defendants MIR E. ALI and SHAKERALI specifically admit the following allegations  
2 of the Complaint filed herein, referenced either by paragraph or portion of paragraph:  
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4 Paragraph 2; Paragraph 3; Paragraph 4; first sentence of Paragraph 7; Paragraph  
5 8; Paragraph 9; Paragraph 11; first sentence of Paragraph 15; first portion of  
Paragraph 24.

6 Defendants MIR E. ALI and SHAKERALI lack personal knowledge or information to  
7 form a belief about the truth of the following allegations, referenced either by paragraph or  
8 portion of paragraph:

9 Paragraph 5; Paragraph 13; Paragraph 14, in regards to events that occurred prior  
10 to said Defendants' purchase of the real property which is the subject of this  
11 litigation; first sentence of Paragraph 23; Paragraph 25.

12 1. AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
13 AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege  
14 that this complaint, and each alleged cause of action thereof, fails to state facts sufficient to  
15 constitute a cause of action against these answering Defendants.

16 2. AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
17 COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering  
18 Defendants allege that the claims in this action are barred, in part or whole, by the applicable  
19 statute of limitations.

20 3. AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
21 AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendant allege  
22 that any damages sustained by Plaintiffs were either wholly or in part the fault of others, whether  
23 that fault be the proximate result of negligence, strict liability, breach of warranty, breach of  
24 contract or any other type of fault caused by persons, firms, corporations or entities other than  
25 these answering Defendants and said negligence or fault comparatively reduces the percentage of  
26 fault or negligence, if any, by these answering Defendants.

1       4. AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
2 COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering  
3 Defendants allege that Plaintiffs were actively and affirmatively careless and negligent in and  
4 about the matters alleged in the complaint, and each alleged cause of action thereof, and that said  
5 carelessness and negligence on Plaintiffs' own parts proximately contributed to the happening of  
6 the accident, to the injuries, loss and damage, if any there were. Under the doctrine of  
7 comparative negligence, Plaintiffs' own comparative negligence shall reduce any and all  
8 damages, if any, sustained by said Plaintiffs.

9       5. AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
10 AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege  
11 that the actions alleged in the complaint were in whole or in part authorized or ratified by  
12 Plaintiffs, and as a result thereof, Plaintiffs are estopped from asserting any claim of action based  
13 thereon.

14       6. AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT,  
15 AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege  
16 that Plaintiffs failed to mitigate their alleged damages and thereby Plaintiffs are precluded  
17 from recovering those damages that could have reasonably been avoided.

18       7. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE  
19 COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering  
20 Defendants allege that, at all times herein mentioned, they acted in good faith and in substantial  
21 compliance with all applicable law.

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8. AS AN EIGHTH, AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege that Plaintiffs, by virtue of having been the sole or major contributing factor to the alleged losses of which Plaintiffs now complain, based on joint or individual fault or misconduct is guilty of unclean hands and therefore barred from seeking the relief sought in the complaint by that principal.

9. AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege that Plaintiffs failed to meet and perform all necessary covenants, conditions and promises required by Plaintiffs in accordance with the terms and conditions of the contract.

10. AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege that the actions of the Plaintiffs prevented Defendants from performing in any way, and released Defendants from any duty or liability to Plaintiffs. Should any breach of duty have occurred on the part of Defendants, said breach was waived by the conduct and actions of the Plaintiffs.

11. AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege that there has been a failure of consideration rendering the contract unenforceable.

12. AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF, these answering Defendants allege that Plaintiffs, with full appreciation of particular risks involved, nevertheless knowingly and voluntarily assumed the risks and hazards of the actions complained of and the damages, if any, resulting there from.

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1 WHEREFORE, Defendant prays that judgment be entered as follows:

- 2 1. That all relief requested in the Complaint be denied with prejudice;
- 3 2. That Plaintiffs take nothing by this action;
- 4 3. That judgment be entered in Defendant's favor;
- 5 4. That Defendants be awarded costs of suit and reasonable attorneys' fees incurred  
herein; and
- 6 5. Such further and other relief as the Court deems just and proper.

7 DATED: May 8, 2008

8 **BECKMAN MARQUEZ & DOWLING, LLP**

9   
10 By: RICHARD L. BECKMAN  
11 Attorneys for Defendants  
12 MIR E. ALI  
SHAKERA ALI